

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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VLADIMIR NIKITIN,

Plaintiff and Respondent,

v.

ANATOLIY TREPACHKO,

Defendant and Appellant.

C085409

(Super. Ct. No. 34-2016-  
00193392CUBCGDS)

Anatoliy Trepachko appeals from orders denying his motion to set aside entry of default and his motion for reconsideration. Because the orders are not appealable, we will dismiss the appeal.

BACKGROUND

Trepachko sued Nikitin in small claims court for the amount of bounced checks and won. Meanwhile, Nikitin included Trepachko in a suit alleging various improper business dealings. The trial court overruled Trepachko's demurrer to the first amended complaint and gave him until October 3, 2016, to file and serve an answer.

Trepachko did not file an answer by the deadline, but instead filed a motion for reconsideration, which the trial court denied. When Trepachko still did not answer the complaint, Nikitin filed a request for entry of default but did not seek a default judgment. The clerk entered the default, but no default judgment appears in the record.

In April 2017, Trepachko filed a motion to set aside entry of default pursuant to Code of Civil Procedure section 473, subdivision (b)<sup>1</sup> [mistake, inadvertence, surprise, or excusable neglect]. He claimed he was never served with the first amended complaint, and, given all the litigation activity, he inadvertently failed to realize he needed to file an answer after his demurrer was overruled. The trial court denied the motion, finding Trepachko’s claim that he was not served with the first amended complaint “untenable” because he demurred to the first amended complaint. The trial court found no basis for granting relief under section 473.

Five days later, Trepachko filed a motion for reconsideration. His declaration in support of the motion again claimed he had never been served with the first amended complaint, but rather was served with the original complaint in which he was not yet a named party. The trial court denied the motion, noting Trepachko failed to cite any new facts, circumstances, or law to support reconsideration under section 1008, subdivision (a).

Trepachko filed a notice of appeal, checking the box on the appeal form indicating he appealed from “[a]n order or judgment under Code of Civil Procedure, § 904.1(a)(3)-(13).” The box on the form for an appeal from a “[d]efault judgment” was left blank.

## DISCUSSION

“An appealable judgment or order is essential to appellate jurisdiction . . . .” (*Winter v. Rice* (1986) 176 Cal.App.3d 679, 681 (*Winter*)). “Although it may be

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<sup>1</sup> Undesignated statutory references are to the Code of Civil Procedure.

reviewed on an appeal from the judgment, no direct appeal lies from an order denying a motion to vacate a default.” (*Id.* at p. 682.)

In this case, the record does not contain a judgment from which defendant appeals. Instead, defendant appeals from the trial court's order denying his motion to set aside the default. That order is not directly appealable. (*Winter, supra*, 176 Cal.App.3d at p. 682.)

Because the order denying defendant’s motion to set aside the default is not appealable, neither is the trial court’s order denying his motion for reconsideration of that denial order. (§ 1008, subd. (g) [“An order denying a motion for reconsideration made pursuant to subdivision (a) is not separately appealable. However, if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order”].)

Because Trepachko has not appealed from an appealable order, we will dismiss the appeal.

## DISPOSITION

The appeal is dismissed.

/S/  
MAURO, Acting P. J.

We concur:

/S/  
MURRAY, J.

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/S/  
KRAUSE, J.